

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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SUZANNE GENEREUX, et al *

Plaintiffs, *

vs. * CIVIL ACTION

 * No. 04-12137-JLT

AMERICAN BERYLLIA *

CORP., et al *

Defendants. *

* * * * *

BEFORE THE HONORABLE JOSEPH L. TAURO
UNITED STATES DISTRICT JUDGE
STATUS CONFERENCE

A P P E A R A N C E S

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Courtroom No. 20
John J. Moakley Courthouse
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September 12, 2005
10:25 a.m.

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1 P R O C E E D I N G S

2 THE CLERK: All rise for the Honorable Court.

3 THE COURT: Good morning everybody.

4 THE CLERK: Civil action No. 04-12137, Suzanne
5 Genereux versus American Beryllia, et al.

6 Would counsel please identify themselves for the
7 record.

8 MR. HONIK: Good morning, Your Honor. Rubin
9 Honik and Stephan Matanovic appearing pro hac vice on behalf
10 of the plaintiffs.

11 MR. HENRY: And good morning, Your Honor.
12 Brad Henry and Michael Bogdanow also on behalf of the
13 plaintiffs.

14 THE COURT: Okay.

15 Anybody else want to identify themselves?

16 MR. AHERN: Your Honor, William Ahern
17 representing American Beryllia.

18 MS. CAMERON: Kellie Cameron, Hardric Labs.

19 MR. UBERSAX: Jeff Ubersax for Brush Wellman.

20 MR. WYMAN: John Wyman and Sara Bryant is with
21 me representing Kyocera.

22 THE COURT: Okay. Give me a minute to catch
23 up with you, please.

24 (Pause in proceedings.)

25 THE COURT: Okay. I am not inclined to send

1 this to the SJC. I am inclined to rely on my decision which
2 is in accord with Judge Zobel's approach to this. And if
3 that is incorrect, then -- and I don't think it is. But if
4 it is incorrect, we will be corrected by the Court of
5 Appeals if someone takes it up.

6 So what remains in the case is for me to find out
7 if you are ready for trial or if you are thinking about
8 settling this case.

9 Let me ask the first question. Are you ready for
10 trial?

11 MR. HENRY: No, Your Honor.

12 THE COURT: Why not?

13 MR. HENRY: Well, we haven't really even
14 commenced factual discovery because I think our last order
15 from the Court was we cannot commence with the discovery
16 until the Court allowed it. We do, however --

17 THE COURT: Well, except that you were
18 supposed to -- that order was my Rule 26 order. And you are
19 supposed to have taken care of very important discovery. In
20 other words, you are supposed to turn over everything that
21 is related to the complaint in any way, my order being much
22 broader than Rule 26 itself.

23 And if you have done that, then you may be ready
24 for trial. Otherwise there may be a couple of depositions
25 that you need to take. But there shouldn't be any deep

1 mining for information. That should have all been turned
2 over.

3 MR. HENRY: Understood, Your Honor. That has
4 not yet occurred.

5 THE COURT: Well, it is supposed to have
6 occurred.

7 MR. HENRY: The plaintiff has made disclosures
8 but --

9 THE COURT: Wait, wait, wait.

10 MR. HENRY: Sure.

11 THE COURT: When did we send out the Rule 26
12 order?

13 THE CLERK: I am going to pull it up, Judge.

14 (Pause in proceedings.)

15 THE COURT: December 9th I issued a Rule 26
16 order. It is September now.

17 MR. HENRY: Yes, Your Honor. That order went
18 out but we never had an initial scheduling conference. It
19 was converted to a motion hearing. And we all attended the
20 motion hearing and the Court ruled upon it.

21 But our understanding is that we still haven't had
22 an initial scheduling conference setting out what we are
23 permitted to do in terms of discovery over and above the
24 automatic discovery.

25 THE COURT: Well, you are supposed to have

1 done the Rule 26. I mean, that is clear. That is on the --

2 MR. HENRY: Well, Your Honor, plaintiffs have
3 done it. The defendants have not yet.

4 THE COURT: Okay. Why not?

5 MR. UBERSAX: Your Honor, on behalf of my
6 defendant Brush Wellman, frankly we understood that our
7 discovery obligation and our opportunity to take discovery
8 was on hold pending this conference with the Court.

9 The last time we were we had a motions argument.
10 Plaintiffs' counsel, you asked plaintiffs' counsel whether
11 we had done any discovery. And they said no. And the Court
12 said fine.

13 And at the end of the hearing plaintiffs' counsel
14 again asked, well, you know, are we supposed to be making
15 disclosures. And I believe the Court said no, we will
16 address that when you come back in April or sometime after
17 motions are ruled upon.

18 They now have been. And frankly no one has done
19 anything in terms of discovery yet. I know we all had the
20 same understanding. I hope it wasn't incorrect.

21 THE COURT: Well, let me say this: It is one
22 of two things. You are all correct or I am. And as tough
23 as I could be, when I drive to work in the morning I find
24 that everybody on the road is crazy.

25 (Laughter.)

1 THE COURT: And I often say to myself, well,
2 maybe it is me today and not everybody else.

3 So why don't we just presume that I was not
4 specific enough. And I try to be but every once in a while
5 it gets away from me.

6 So how much time do you need to fully comply with
7 my Rule 26 order, understanding that it is really an empty
8 the filing cabinets order?

9 MR. HENRY: We understand that, Your Honor.
10 We have worked out a schedule. If that's helpful, I can
11 hand it up.

12 MR. UBERSAX: You are talking about
13 disclosures?

14 THE COURT: I am talking about Rule 26. Let's
15 forget about what you have worked out. Let's take it a bite
16 at a time.

17 How much time do you need to comply fully with Rule
18 26?

19 MR. UBERSAX: On behalf of Brush Wellman I
20 don't think we need more than two weeks to do that.

21 THE COURT: All right. What about the rest of
22 you?

23 MR. WYMAN: Your Honor may remember that there
24 was an issue that we raised beginning with the government
25 contractor defense. And in response to that, there was an

1 affidavit that was served by the plaintiffs on us in the
2 spring.

3 And the issue there had to do with what, if any,
4 Kyocera products were located there. And we have the need
5 for additional specificity as to what kind of product for us
6 to able to do a full disclosure. We could do a limited
7 disclosure this week addressing what we have been able to
8 identify. But there is a very serious product
9 identification issue here.

10 THE COURT: Well, that may come as a second
11 wave of discovery.

12 MR. WYMAN: So the first wave of discovery,
13 that's fairly simple. But we will then get to the second
14 phase --

15 THE COURT: Let's do the first wave first and
16 we will deal with your concerns in a minute.

17 What about the rest of you?

18 MR. AHERN: Yes, Your Honor. Our difficulty
19 is that we're a successor corporation that purchased assets
20 out of a bankrupt estate. So I think we can produce what we
21 have, which is virtually nothing since we weren't even in
22 existence.

23 THE COURT: Well, then produce what you have
24 and you file an affidavit saying that there is no more. I
25 mean, so at least your skirts are clean.

1 MR. AHERN: We can do that within two weeks,
2 Your Honor.

3 THE COURT: All right. Two weeks, is that --
4 nothing happens in two weeks. This is September 12th. Why
5 don't we say the last working day in October you will fully,
6 both sides, will have fully complied with the Rule 26
7 obligation.

8 Now, this will take you into further discovery
9 perhaps. The plaintiff -- all I am interested in is what
10 depositions you want to take. I am not going to deal with
11 interrogatories at this stage. There won't be any.

12 And there is no need for production of document
13 motions because the Rule 26 is supposed to take care of
14 that.

15 So who do you need to depose?

16 MR. HENRY: We'd like a 30(b)(6) of each
17 defendant. A 30(b)(6) of Raytheon which I think at this
18 point is no longer a defendant so I think there may be a
19 separate final judgment issued with Raytheon. I think
20 Mr. Wyman is talking about discovery as to Raytheon.

21 In addition to just the 30(b)(6), we'd like the
22 option after the 30(b)(6) is over to take two additional
23 depositions if necessary of each of the defendants. For
24 example, somebody in sales or customer support is one
25 category. And then somebody in -- the director of safety or

1 health or environmental control or industrial hygiene. So
2 one person in each of those two categories.

3 THE COURT: All right.

4 MR. HENRY: And that's it, of all of them and
5 then the same --

6 THE COURT: Have you got that, Brad?

7 Okay.

8 MR. HENRY: I have written it down if it's
9 helpful.

10 THE COURT: All right.

11 MR. HENRY: And beyond that, Your Honor, at
12 this point we don't envision other depositions necessary
13 after we have taken those.

14 THE COURT: Okay. So how much time do you
15 need to accomplish those depositions?

16 Give yourself enough time. I am not going to grant
17 any extensions.

18 MR. HENRY: All right. To be realistic, we
19 think we can finish those probably by the middle or the end
20 of February, because we are talking four defendants.

21 THE COURT: All right. Last working day in
22 February, how is that?

23 What about the defendants? Do you have any
24 depositions you want to take?

25 MR. UBERSAX: Absolutely, Your Honor. And I

1 guess I'd like to respond. Well, first of all, what we'd
2 like to do is to depose each of the plaintiffs, co-workers
3 of Suzanne Genereux, the lead plaintiff, at Raytheon.

4 THE COURT: By name.

5 MR. UBERSAX: We don't know their names yet
6 because we haven't had any discovery. But we will
7 certainly, as soon as we get those names --

8 THE COURT: All right. So we will put down a
9 category of coworkers yet to be identified.

10 Who else?

11 MR. UBERSAX: And we also would want to depose
12 the treating physicians of Ms. Genereux. She has a wide
13 variety of health problems totally unrelated to beryllium or
14 beryllium disease, including a heart disease. And she had a
15 stroke in '96 that left her in a wheelchair before anyone
16 talked about lung problems.

17 So we want to depose five or six or maybe more of
18 her treating physicians.

19 THE COURT: Well, identify them.

20 MR. UBERSAX: I can give some names.

21 THE COURT: Well, we need them. I am going to
22 issue an order authorizing certain discovery and no other.
23 If I don't have the names, I can't authorize it.

24 MR. UBERSAX: Well, the names that I have at
25 present are taken from the limited disclosures that the

1 plaintiffs have made --

2 THE COURT: Okay.

3 MR. UBERSAX: -- are the following:

4 Dr. Lee Newman; Dr. T. Verma, V-E-R-M-A;

5 Dr. William Corrao, C-O-R-R-A-O; Dr. James McCormack;

6 Dr. Greigstone Yearwood. Greigstone is spelled

7 G-R-E-I-G-S-T-O-N-E.

8 THE COURT: What is the last name?

9 MR. UBERSAX: The last name is Yearwood.

10 Dr. David Ashley --

11 THE COURT: Can you spell that?

12 MR. UBERSAX: Yearwood is just year wood, two
13 words.

14 Dr. David Ashley. Dr. Richard Millman,

15 M-I-L-L-M-A-N. And the last one I have is Dr. Gary Epler,

16 E-P-L-E-R. It may be that we don't need to take all those
17 depositions.

18 THE COURT: All right. Well, I will authorize
19 them.

20 Now, what --

21 MR. UBERSAX: I'm not done. Excuse me, Your
22 Honor.

23 THE COURT: Well, you are done. I am not sure
24 how many I am going to permit.

25 MR. UBERSAX: We also, very important in this

1 case, very important is going to be discovery from employees
2 at Raytheon Corporation where Ms. Genereux worked. In
3 addition to her coworkers, we need to talk to people who
4 were in charge of the industrial hygiene, the medical
5 program there, people who knew about the health --

6 THE COURT: So you want a 30(b)(6); don't you?

7 MR. UBERSAX: That's probably a good place to
8 start, sure. We want to start with a 30(b)(6).

9 We also already have records naming some people.
10 So I think, you know, it's --

11 THE COURT: Why don't we start with the
12 30(b)(6). And then if you want additional discovery, you
13 will file a motion identifying by name or at least category
14 people that you want to depose in addition to those that I
15 have approved. And we will do it in that sort of an orderly
16 fashion.

17 MR. UBERSAX: That's fine.

18 THE COURT: Okay.

19 MR. UBERSAX: And in terms of the time for it,
20 we actually -- and we tried to agree on a schedule before
21 coming here. And what we talked about was a fact discovery
22 cutoff of May 12th which seemed reasonable to everybody.
23 That's eight months. I think February is too tight.

24 THE COURT: Well, for the laundry list of
25 potential deponents that you just described I can understand

1 why you feel that way.

2 All right. So why don't we move both discovery
3 schedules to the last working day in May. I will bring you
4 back for a further conference in June at which time we will
5 see what else needs to be done, if anything.

6 If nothing needs to be done, we will try to settle
7 the case. If that doesn't look likely, then I will just
8 give you a trial date shortly thereafter.

9 MR. UBERSAX: Your Honor, may I ask how
10 experts fit into all of this? Would this come after the
11 fact discovery?

12 THE COURT: We will deal with that at the next
13 conference. The further conference you will tell me we need
14 an expert or we don't need an expert. You may identify
15 experts and have an accompanying affidavit and that will
16 probably be it.

17 I probably will not allow expert discovery telling
18 you instead to rely on the affidavit. I generally do not
19 permit depositions of experts.

20 Anything else? Give them a date.

21 THE CLERK: June 6th, 2006, ten a.m.

22 THE COURT: June 6th, that is the date for our
23 next meeting. Okay?

24 MR. HENRY: Yes. Here?

25 THE COURT: Where would you like to have it?

1 (Laughter.)

2 MR. HENRY: Mr. Matanovic is from
3 Philadelphia.

4 THE COURT: It would be nice to go to
5 Philadelphia except that they don't pay me to travel.

6 MR. HENRY: Your Honor, one of the questions
7 that we have is that -- we understand the emptying the
8 filing cabinet rule.

9 THE COURT: It isn't necessary to actually
10 provide the documents. At least come up with a menu of
11 available materials. And then the person that wants the
12 material would make the request, pay for the copying and
13 that is it.

14 MR. HENRY: We have some specific categories
15 that it may not occur to the defendants that we are looking
16 for information on. Is it worthwhile discussing here or
17 waiting till after --

18 THE COURT: Just wait till after. I mean, you
19 can tell them that this is what you expect in the envelope
20 when they send the stuff to you. If they have a
21 disagreement, then you are going to have a motion to compel.

22 If I think it is a frivolous motion either way,
23 then I will sanction the party that is being frivolous.

24 MR. HENRY: Okay. Thank you, Your Honor.

25 THE COURT: I hope that doesn't happen.

1 MR. WYMAN: On behalf of Kyocera, Your Honor,
2 I have some additional deponents that we would like to
3 depose.

4 THE COURT: Yes.

5 MR. WYMAN: First is Frank Balint who is the
6 individual who authored the affidavit.

7 THE COURT: Okay.

8 MR. WYMAN: His wife Claire Balint who
9 allegedly was also exposed to beryllium at the workplace in
10 Raytheon.

11 And there have been four other former Raytheon
12 employees identified by the plaintiff in their disclosures
13 who I believe we will probably want to depose but I don't
14 know enough about them yet because I just received this
15 disclosure.

16 THE COURT: Just tell us the names.

17 MR. WYMAN: Robert Barberio, B-A-R-B-E-R-I-O,
18 Ernest Betuchy, B-E-T-U-C-H-Y, Steven Chadwick, that's with
19 a V, and Stanley --

20 THE COURT: You mean the Steven is with a V?

21 MR. WYMAN: Yes.

22 And Stanley Lichwala, L-I-C-H-W-A-L-A.

23 THE COURT: Okay. And I take it you can take
24 those within this time frame which we have set?

25 MR. WYMAN: I see no reason we can't.

1 THE COURT: All right. If anybody has
2 trouble -- I am inclined not to allow any extensions so if I
3 were you, I would get it done and get it over with.

4 MR. UBERSAX: Your Honor, I realize that I am
5 able to name some individuals, Raytheon employees, if the
6 Court would prefer that I do that at this point.

7 THE COURT: Absolutely. I mean, I am going to
8 authorize certain discovery. After that you are going to
9 have to file a motion to have additional discovery. You
10 can't just do it by yourself where the parties get together
11 and agree that they're going to do this. You can't do that.
12 Okay.

13 MR. UBERSAX: Let me then give you the names
14 that I have now. Robert Demeo, D-E-M-E-O; Leo Myers,
15 M-Y-E-R-S; Van Raman, R-A-M-A-N; an individual named -- I
16 don't know his full first name, P initial Ward, W-A-R-D; r.
17 J. Merrow, M-E-R-R-O-W; Mort Sullivan.

18 And then four doctors: Dr. Beverly Shaw; Dr. Peter
19 Toch, T-O-C-H; Dr. Andros Balos, B-A-L-O-S; Dr. Joe Godrick,
20 G-O-D-R-I-C-K. And the last name I have is John Chartier,
21 C-H-A-R-T-I-E-R.

22 Now, it may be of course that at the 30(b)(6) we
23 learn that these people aren't necessary as deponents but --

24 THE COURT: You are not required to. You are
25 just looking for authorization. And that all is going to be

1 done as of the last working day in May.

2 MR. AHERN: Your Honor, on behalf of American
3 Beryllia, we anticipate that we may have to depose a
4 30(b)(6) of General Ceramics Corporation which is the
5 bankrupt entity. I don't know exactly how we are going to
6 do it but we'd like to at least have the option to depose
7 someone there who knows about the asset purchase.

8 THE COURT: Okay.

9 MR. AHERN: And I also have a question on
10 dispositive motions, Your Honor. Can they be filed at any
11 time?

12 THE COURT: Any time.

13 MR. AHERN: Thank you.

14 MR. WYMAN: I'm just going through my notes,
15 Your Honor. I have some additional people who we may want
16 to depose. A few individuals who were --

17 THE COURT: Just make it easy for Brad, say
18 who you represent again.

19 MR. WYMAN: Kyocera.

20 The first is Carl Trautbutter,
21 T-R-A-U-T-B-U-T-T-E-R. He was an employee of the United
22 States Navy. And Dr. Kenzie Jones, K-E-N-Z-I-E. And he was
23 also an employee of the United States Navy.

24 Another individual who was an employee of Raytheon,
25 Ted -- I'm going to spell this. I can't pronounce it --

1 D-Z-I-E-M-E-N-O-W-I-C-Z.

2 THE CLERK: One more time.

3 MR. WYMAN: Yes. D-Z-I-E-M-E-N-O-W-I-C-Z.

4 THE COURT: Why can't you pronounce that.

5 (Laughter.)

6 MR. WYMAN: I haven't practiced yet, Your
7 Honor. I may have been brought up in the Connecticut River
8 Valley but I still have to practice them.

9 THE COURT: All right.

10 MR. WYMAN: And Bob Boland.

11 THE COURT: B-O-L-A-N-D?

12 MR. WYMAN: That's correct.

13 THE COURT: Have you got everything?

14 THE CLERK: Yes.

15 THE COURT: Okay. That is all to be done the
16 last working day in May. You are going to see me again
17 June, what is it again?

18 THE CLERK: June 6th, Judge.

19 THE COURT: We will send out an order
20 memorializing all this.

21 And as an aside, I remind you -- I am sure it is
22 unnecessary -- that you are supposed to file an affidavit
23 with me indicating that you have gone over with your clients
24 the cost of litigation here.

25 And I tell you that without having done any

1 research, my intuition is that you are way way over any
2 discovery requests that I have had in 33 years on this
3 bench. I don't know if you have any idea how much all this
4 discovery is going to cost you. But I have never had a case
5 with this many requests for discovery. And I have had a lot
6 of big cases.

7 So you either have the biggest case that has ever
8 been before me, congratulations, or you are spending a lot
9 of money for nothing.

10 So I'd take another look at it. And also I would
11 suggest that you talk with your principals and ask them if
12 they want to set a new record for litigation costs or they
13 want to try to please their shareholders and see if they can
14 get rid of this case on some equitable basis.

15 It is worth something and it is only worth so much.
16 So that is the way to approach it. Okay. But I wouldn't
17 just go merrily for the next eight or nine months with these
18 kind of discovery costs. You can do it but you better have
19 that affidavit filed indicating that you have permission of
20 your client to go ahead and do it.

21 Thank you.

22 COUNSEL: Thank you, Your Honor.

23 (WHEREUPON, the proceedings were recessed at 10:50
24 a.m.)

25

C E R T I F I C A T E

I, Carol Lynn Scott, Official Court Reporter for the United States District Court for the District of Massachusetts, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes taken in the aforementioned matter to the best of my skill and ability.

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